

Indiana ENERGY
Association

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Ed Simcox, CEO

Stan Pinegar, President

Boonville Natural Gas Corp.

Citizens Energy Group

Community Natural Gas Co., Inc.

Duke Energy

Indiana Michigan Power

Indiana Natural Gas Corp.

Indianapolis Power & Light Company

Kokomo Gas & Fuel Co.

Midwest Natural Gas Corp.

Northern Indiana Fuel & Light Co.

Northern Indiana Public Service Co.

Ohio Valley Gas Corp.

Sycamore Gas Co.

Vectren Energy Delivery of Indiana, Inc.

THE VOICE FOR INDIANA ENERGY

March 1, 2010

MaryAnn Stevens
Rules Development Branch
Office of Legal Counsel
Indiana Department of Environmental Management
100 North Senate Ave
MC 65-41
Indianapolis, Indiana 46204-2251

RE: Indiana Utility Group Comments to IDEM's Request for Fiscal Analysis of the Second Notice of Comment to the Antidegradation Draft Rule

Dear Ms. Stevens:

By this letter, we respectfully submit comments for your consideration in response to Indiana Department of Environmental Management's request for fiscal analyses of the Second Notice of Comment for Development of New Rules and Amendments to the Rules concerning Antidegradation Standards and Implementation Procedures. These comments are filed in advance of the agency's completion and submittal of required fiscal analysis to the Indiana Office of Management and Budget.

These comments are offered on behalf of the Indiana Energy Association (IEA) and other partners to this effort collectively referred to as Indiana Utility Group ("IUG"). The IUG for purposes of this rulemaking includes the following companies:

Citizens Energy Group
Dominion State Line Energy
Duke Energy
Hoosier Energy REC, Inc.
Indiana-Kentucky Electric Corporation
Indiana Michigan Power
Indianapolis Power & Light Company
Northern Indiana Public Service Co.
Vectren Energy Delivery of Indiana, Inc.
Wabash Valley Power

The IEA is an association of the 13 Indiana investor-owned electric and gas utilities and one charitable public trust gas utility, representing over 97 percent of the baseload electricity generating capacity in the state

which is impacted by these rules. The IEA members listed above and the aforementioned individual non-member companies, collectively referred to as the “Indiana Utility Group” or “IUG” operate approximately 21,374 MW of coal-fired capacity in Indiana and serve over 4,000,000 Indiana customers. The Indiana Utility Group is committed to working with IDEM to develop an appropriate water quality regulatory program that provides antidegradation implementation in an appropriate and effective manner. These comments compliment the comments filed on this matter by the IUG on February 1, 2010 and are in response to the agency’s request for fiscal analyses. These analyses represent a joint effort among the members of the IUG and the Indiana Manufacturers Association and were conducted on our behalf by ENVIRON. ENVIRON is a highly respected consulting firm, which provides technical services for clients to effectively manage implementation of environmental regulatory programs. ENVIRON has specific experience in assisting clients in implementation and compliance with state water quality programs. The company has extensive work experience in the area of water regulation and permitting in Indiana and surrounding states.

ENVIRON has conducted an economic analysis for an individual discharger subject to three specific provisions of the draft IDEM antidegradation rule 327 IAC 2-1.3. The cost estimates presented herein are based on ENVIRON's experience with labor (technical and legal) and expense (sampling) factors encountered at Indiana and other Great Lakes states' facilities during previous antidegradation evaluations.

COMMENTS

These cost analyses are based upon the language of the draft rule. The vagaries of the draft rule shifts a significant burden to the regulated community, many of which are utilities who have a customer base that will be directly impacted by increased rates. A decision by the agency to move forward with the rule as proposed will result in utility ratepayers unnecessarily incurring significantly increased costs. As opposed to presenting a regulatory program with defined endpoints and goals, this rule provides an obligation for every potential discharger to define how the rule might impact them or to define how the rule might provide for an exemption. This rule assumes it reasonable to create a case-by-case water impacts study for every potential discharge to a surface stream, for which the regulatory result will vary for every applicant. Put simply, the rule does not inform any stakeholder who will be impacted, what will be regulated or the environmental purpose to be achieved. Utilizing the unknown facility or pollutant targets currently provided in the draft rule, the following cost estimates have been surmised:

- IDEM Antidegradation Exemption Demonstration Cost Estimate = \$138,000
- IDEM Antidegradation Demonstration Cost Estimate = \$321,000
- A Water Quality Improvement Application Cost Estimate = \$366,000
- IDEM Antidegradation Rule = Minimum 30% Increase Over Similarly Situated States
- 30% Increase Does Not Include Added Cost For Unknown List of "Pollutants of Concern"

Exemption Analysis. The first rule analysis is shown as attached Case Study #1. Case Study #1 presents the financial impact for a discharger who prepares an exemption demonstration/justification subject to 327 IAC 2-1.3-4 and 327 IAC 2-1.3-5. Six exemption options (1A to 1F) were generated from these sections of the rule along with corresponding cost for completion and documentation. Option 1F is of particular relevance for the addition of air pollution treatment. Costs for the exemption demonstration/justification range up to \$138,000 for an individual discharger.

Antidegradation Analysis. The second rule analysis provision is shown as attached Case Study #2. Case Study #2 presents the financial impact for a discharger who prepares an antidegradation demonstration for a new or increased discharge to an ONRW, OSWR, or HQW subject to 327 IAC 2-1.3-6. Costs for the antidegradation demonstration are estimated at \$321,000 for an individual discharger.

Water Quality Improvement Application. The third rule analysis is shown as attached Case Study #3. Case Study #3 presents the financial impact for a discharger who prepares a water quality improvement application for a new or increased discharge to an OSRW subject to 327 IAC 2-13-8. Costs for the improvement application are estimated at \$366,000 for an individual discharger.

Comparison Against Other State's Programs. With regard to financial impacts in adjacent states, Ohio and Illinois do not require submittal of antidegradation applications unless a permittee is requesting new or revised (increased) discharge limits for specific constituents due to a planned facility or plant modification (i.e., antidegradation triggered by permit limits). Within this defined framework, the comparative cost would be less (estimated up to 30% less) than Indiana's, mainly due to a specific (reduced) list of constituents to evaluate and more focused public participation. Further, there is no comparative cost to Indiana when the antidegradation application is triggered by an increase in effluent concentration and mass for any "pollutant of concern". Such costs do not

exist in these adjacent states as this action is not subject to antidegradation.

In addition to the costs to individual dischargers for compliance with specific rule provisions provided above, another cost to be considered in the implementation of the proposed antidegradation rule is the investment of resources by IDEM in processing and responding to antidegradation applications. In the past five calendar years, IDEM has received approximately 49 new NPDES permit applications each year with actual numbers ranging from 38 to 60. On average, IDEM has received 56 modification requests annually. The annual estimate of de minimis demonstrations needed by existing discharge permit holders could range from 49 to 105. As discussed in detail by the Indiana Manufacturers Association comments, evaluations of this magnitude represents between \$2 million and \$7.9 million dollars. These estimates are base upon NPDES permitting actions. Given that there is not a clear link between the requirement for an antidegradation application and a modification of an NPDES Permit, it could be expected these costs are low since there is an unknown universe of other "pollutants of concern" that will require regulatory action. The cost for IDEM to process antidegradation applications and the consideration of the funding for review of the applications should be factored into the fiscal analysis of the proposed rule. At this point in the rulemaking, these factors are not well defined.

The IUG urges the agency to refine its rulemaking as suggested by IUG in its programmatic comments filed with the agency on February 1, 2010. IUG continues to urge IDEM to focus on the most cost effective elements of an implementation program and to keep in mind the need for Indiana to preserve and promote its environmental program in a manner that assures regulatory certainty and a strong state economy.

Thank you for the opportunity to provide these comments. If you have any questions or concern regarding our comments, please do not hesitate to contact me.

Very truly yours,

A handwritten signature in black ink, appearing to read "Stan Pinegar".

Stan Pinegar, President
Indiana Energy Association
On behalf of the Indiana Utility Group (IUG)

Enclosure

CASE STUDY #1

Financial Impact for preparation of exemption
demonstration/justification pursuant to 327 IAC 2-1.3-4
(Exemptions from the demonstration requirements and 327
IAC 2-1.3-5 (Exemption Justification))

**TITLE 327 WATER POLLUTION CONTROL BOARD, SECOND NOTICE OF COMMENT PERIOD
DEVELOPMENT OF NEW RULES AND AMENDMENTS TO RULES CONCERNING ANTIDEGRADATION STANDARDS AND IMPLEMENTATION PROCEDURES**

FINANCIAL IMPACT ANALYSIS OF PROPOSED RULES ON REGULATED COMMUNITY

Case Study 1: Financial Impact for preparation of exemption demonstration/justification pursuant to 327 IAC 2-1.3-4 (Exemptions from the demonstration requirements and 327 IAC 2-1.3-5 (Exemption Justification)

Option 1A: For new or increased discharges to an ONRW (exemption demonstration only allowed for short-term, temporary discharges of non-BCCs) (327 IAC 2-1.3-4(a))

To meet requirements of rule, ENVIRON recommends submittal of information describing the short-term activity and to provide back-up documentation/calculations that lowering of water quality would be short-term and minimal. Recommended steps to meet rule requirements is to also perform demonstration similar to deminimis evaluation to demonstrate no appreciable lowering of water quality but since not specifically required would only perform evaluation on parameters with corresponding water quality criteria. Since no clear definition of "pollutants of concern" ENVIRON would recommend comprehensive analysis, including receiving water data (believe available data incomplete for most receiving waters). Pursuant to the rule requirements, public notice is not required and therefore costs to respond to comments have not been included.

Step 1: Data Collection of Intake, Discharge, and Receiving Waters (assume 3 samples per location):

\$18,000

Step 2: Demonstration of No Appreciable Lowering of Water Quality Calculations:

\$7,500

Step 3: Preparation of Documentation for Submittal to IDEM:

\$12,000

Option 1A Subtotal: **\$37,500**

Option 1B: For new or increased discharges to HQW or OSRW for Non-BCCs (327 IAC 2-1.3-4(b)(1))

To meet requirements of rule, ENVIRON recommends performance of deminimis evaluation, and providing the exemption documentation request for IDEM submittal. Since no clear definition of "pollutants of concern" ENVIRON would recommend comprehensive analysis, including receiving water data (believe available data incomplete for most receiving waters). At this time difficult to provide costs for performing deminimis evaluation on conventional pollutants (because unknown how to develop water quality criteria) so not including at this time. Pursuant to the rule requirements, public notice is not required and therefore costs to respond to comments have not been included.

Step 1: Data Collection of Intake, Discharge, and Receiving Waters (assume 3 samples per location):

\$18,000

Step 2: Deminimis Evaluation Calculations:

\$18,000

Step 3: Preparation of Documentation Supporting Evaluation for Submittal to IDEM:

\$15,000

Option 1B Subtotal: **\$51,000**

Option 1C: For discharges that may meet the exemptions pursuant to 327 IAC 2-1.3-4(b)(2)

To meet the requirements of these exemptions, no additional costs beyond preparation of the application activities normally required as part of NPDES permit requirements is required and therefore no costs have been assumed.

Option 1C Subtotal: **\$0**

**TITLE 327 WATER POLLUTION CONTROL BOARD, SECOND NOTICE OF COMMENT PERIOD
DEVELOPMENT OF NEW RULES AND AMENDMENTS TO RULES CONCERNING ANTIDEGRADATION STANDARDS AND IMPLEMENTATION PROCEDURES**

FINANCIAL IMPACT ANALYSIS OF PROPOSED RULES ON REGULATED COMMUNITY

Case Study 1: Financial Impact for preparation of exemption demonstration pursuant to 327 IAC 2-1-3-4 (Exemptions from the demonstration requirements and 327 IAC 2-1-3-5 (Exemption Justification))

Option 1D: For dischargers that may meet the exemptions pursuant to 327 IAC 2-1-3-4(b)(3)

To meet requirements of rule, ENVIRON is assuming same evaluation similar to that provided for Option 1A would be required.

Option 1D Subtotal: \$37,500

Option 1E: For dischargers that may meet the exemption demonstrations pursuant to 327 IAC 2-1-3-4(b)(4)(A, B & D)

To meet the requirements of this rule, which requires public notice of the demonstration, ENVIRON recommends similar first two steps for Option 1B in addition to costs associated with a preliminary engineering evaluation and response to public notice comments. ENVIRON also included costs for outside legal support for response to public comments. This section requires the identified information pursuant to 327 IAC 2-1-3-5 (Exemption Justification).

Step 1: Data Collection of Intake, Discharge, and Receiving Waters (assume 3 samples per location):

Step 2: Deminimis Evaluation Calculations:

Step 3: Demonstration That Cost-Effective Technologies are Employed:

Step 4: Preparation of Documentation for Submittal to IDEM:

Step 5: Public Notice Activities Consisting of Response to Comments:

Option 1E Subtotal: \$126,000

Option 1F: For dischargers that meet the exemption demonstrations pursuant to 327 IAC 2-1-3-4(b)(4)(C) (specific to the addition air pollution treatment)

To meet the requirements of this rule, which requires public notice of the demonstration, ENVIRON recommends similar steps to those provided for Option 1E in addition to an additional evaluation to demonstrate that air pollutant would provide an environmental improvement. For this specific evaluation, ENVIRON assumes no extensive air dispersion modelling would be required. This section requires the identified information pursuant to 327 IAC 2-1-3-5 (Exemption Justification).

Step 1: Data Collection of Intake, Discharge, and Receiving Waters (assume 3 samples per location):

Step 2: Deminimis Evaluation Calculations:

Step 3: Demonstration That Cost-Effective Technologies are Employed:

Step 4: Environmental Improvement Evaluation Specific to Air Improvements:

Step 5: Preparation of Documentation for Submittal to IDEM:

Step 6: Public Notice Activities Consisting of Response to Comments:

Option 1F Subtotal: \$138,000

CASE STUDY #2

Financial Impact for preparation of antidegradation
demonstration for new or increased discharges to
ONRW, HQW, or OSRW (327 IAC 2-1.3-6)

**TITLE 327 WATER POLLUTION CONTROL BOARD, SECOND NOTICE OF COMMENT PERIOD
DEVELOPMENT OF NEW RULES AND AMENDMENTS TO RULES CONCERNING ANTIDEGRADATION STANDARDS AND IMPLEMENTATION PROCEDURES**
FINANCIAL IMPACT ANALYSIS OF PROPOSED RULES ON REGULATED COMMUNITY

Case Study 2: Financial Impact for preparation of antidegradation demonstration for new or increased discharges to ONRW, HQW, or OSRW (327 IAC 2-1.3-6)

To meet requirements of rule as a worst-case scenario (in terms of costs), ENVIRON recommends performance of deminimis evaluation, and only focus on those parameters that exceed a deminimis lowering of water quality to include as part of the antidegradation demonstration. ENVIRON is assuming that the treatment evaluation can be performed on classes of pollutants rather than on specific pollutants and therefore has assumed evaluation will be for five specific classes based on similar technologies and/or needed low effluent quality requirements (metals, TSS, BOD/COD, other organics, and mercury). Since no clear definition of "pollutants of concern" ENVIRON would recommend comprehensive analysis, including receiving water data (believe available data incomplete for most receiving waters). At this time difficult to provide costs for performing deminimis evaluation on conventional pollutants (because unknown how to develop water quality criteria) so not including at this time. Pursuant to the rule requirements, public notice is also required and as such ENVIRON is also providing costs for responding to comments (with outside legal support).

<i>Step 1: Data Collection of Intake, Discharge, and Receiving Waters (assume 3 samples per location):</i>	\$22,500
<i>Step 2: Deminimis Evaluation Calculations:</i>	\$18,000
<i>Step 3: Calculations Associated With Discharge (327 IAC 2-1.3-6(b)(1 to 4)):</i>	\$3,000
<i>Step 4: Environmental Impact Evaluation (327 IAC 2-1.3-6(b)(5 to 10):</i>	\$15,000
<i>Step 5: Water Pollution Control Alternatives Cost Development (327 IAC 2-1.3-6(b)(11):</i>	\$37,500
<i>Step 6: Water Pollution Control Alternatives and Other Potential Discharge Options Evaluation (327 IAC 2-1.3-6(b)(12 to 14):</i>	\$30,000
<i>Step 7: Economic and Social Impact Evaluation (327 IAC 2-1.3-6(b)(12):</i>	\$67,500
<i>Step 8: Preparation of Antidegradation Demonstration for Submittal to IDEM:</i>	\$37,500
<i>Step 9: Public Notice Activities Consisting of Response to Comments:</i>	<u>\$90,000</u>
Antidegradation Demonstration Subtotal:	<u>\$321,000</u>

CASE STUDY #3

Financial Impact for preparation of water quality
improvement application for new or increased discharges to an
OSRW (327 IAC 2-1.3-8)

**TITLE 327 WATER POLLUTION CONTROL BOARD, SECOND NOTICE OF COMMENT PERIOD
DEVELOPMENT OF NEW RULES AND AMENDMENTS TO RULES CONCERNING ANTIDEGRADATION STANDARDS AND IMPLEMENTATION PROCEDURES**

FINANCIAL IMPACT ANALYSIS OF PROPOSED RULES ON REGULATED COMMUNITY

Case Study 3: Financial Impact for preparation of a water quality improvement application for new or increased discharges to an OSRW (327 IAC 2-1-3-8)

To meet requirements of rule, the discharger is required to apply for a water quality improvement project application. The application must include all the information required for preparation of an antidegradation demonstration application (327 IAC 2-1-3-6) plus additional information as required pursuant to 327 IAC 2-1-3-8 (Water Quality Improvement Project Application). Pursuant to the requirements of 327 IAC 2-1-3-8(A)(ii & iii), the discharger is required to provide sufficient information to demonstrate that the project will result in an overall improvement in water quality and that the data used be less than 7 years old and specific to the OSRW. For this evaluation, ENVIRON assumed data readily available. Pursuant to the rule requirements, public notice is also required and as such ENVIRON is also providing costs for responding to comments (with outside legal support). ENVIRON did not include estimation of fees required pursuant this rule.

Step 1: Subtotal from Antideg Dem Application Requirements (Steps 1 through 7 on previous sheet):

Step 2: Water Quality Improvement Demonstration (assuming available data):

Step 3: Preparation of Water Quality Improvement Application for Submittal to IDEM:

Step 4: Public Notice Activities Consisting of Response to Comments:

\$193,500

\$45,000

\$37,500

\$90,000

Water Quality Improvement Subtotal: **\$366,000**

